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Federal Communications Commission

DA 98-1518

DISPATCHED BY	Before the Federal Communications Commission Washington, D.C. 20554
In the Matter of	) )
Amendment of Section 73.20	2(b), MM Docket No. 98-145
Table of Allotments,	) RM-9330
FM Broadcast Stations.	)
(Buxton, North Carolina)	)

## NOTICE OF PROPOSED RULE MAKING

Adopted: July 29, 1998 Released: August 7, 1998

Comment Date: September 28, 1998 Reply Comment Date: October 13, 1998

By the Chief, Allocations Branch:

- 1. The Commission has before it the petition for rule making filed by Buxton Radio Group ("petitioner") requesting the allotment of Channel 268A to Buxton, North Carolina, as the community's first local aural service. Petitioner states that it will apply for the channel, if allotted.
- 2. Petitioner states that Buxton is located on the Outer Banks of North Carolina, and that it is well-documented that the area is exposed to threats of major hurricanes and other destructive storms. Further, it states that Buxton's location on Hatteras Island and its position as the most populated area of the island show that there is a need for a local broadcast service which can keep the residents informed during local emergencies and evacuations. While acknowledging that there are radio stations licensed to the more populous beach communities of Kill Devil Hills, Kitty Hawk and Manteo, petitioner submits that these stations concentrate their efforts on those communities which are fifty to sixty miles north of Buxton, thus leaving the population of Hatteras Island and Buxton without accurate, local information.
- 3. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Petitioner states that Buxton is a substantial community with a year-round population of 1,300, according to the Rand McNally

<sup>&</sup>lt;sup>1</sup> A petition for rule making has also been filed by Buxton Comunications Company requesting the allotment of Channel 260A to Buxton, NC (RM-9329). Should Channel 260A be allotted, the proposal under consideration herein would represent a second local service.

Atlas, and that this population grows to several thousand during the spring, summer and autumn months. Further, it states that Buxton has its own post office, fire department, elementary and high schools, water department and numerous businesses. However, Buxton is not listed in the U.S. Census. Therefore, the petitioner should present the Commission with sufficient information to demonstrate that Buxton is incorporated, or that it has social, economic, cultural, or governmental indicia which identify themselves with Buxton to qualify it as a "community" for allotment purposes. See, e.g., Belview, Minnesota, 11 FCC Rcd 12793 (1996), Lupton, Michigan, 11 FCC Rcd 14428 (1996).

- 4. We believe petitioner's proposal warrants consideration since the allotment of Channel 268A could provide Buxton, if shown to be a community for allotment purposes, with its first or second local aural service. Channel 268A can be allotted to Buxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.<sup>2</sup>
- 5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	<u>Channel No.</u>		
	Present	Proposed	
Buxton, North Carolina		260A, <sup>3</sup> 268A	

- 6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.
- 7. Interested parties may file comments on or before September 28, 1998, and reply comments on or before October 13, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard J. Hayes, Jr. 8404 Lee's Ridge Road Warrenton, Virginia 20186 (Counsel to petitioner)

<sup>&</sup>lt;sup>2</sup> The coordinates for Channel 260A at Buxton are 35-16-06 North Latitude; 75-31-54 West Longitude.

<sup>&</sup>lt;sup>3</sup> See fn. 1, supra.

- 8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.
- 9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos Chief, Allocations Branch Policy and Rules Division Mass Media Bureau

Attachment: Appendix

## **APPENDIX**

- 1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.
- 2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.
- 3. <u>Cut-off protection</u>. The following procedures will govern the consideration of filings in this proceeding.
- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).
- (b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.
- (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.
- 4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

- 5. <u>Number of Copies</u>. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.
- 6. <u>Public Inspection of Filings</u>. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.